In the High Court of Judicature at Madras

Dated: 17.07.2006

Coram

The Honourable Mr.JUSTICE ELLIPE DHARMA RAO
and
The Honourable Ms.JUSTICE K.SUGUNA

Writ Petition No.43605 of 2002

K.Mariappan
.... Petitioner

Vs.

1. The Registrar of Co-operative Societies,
Chennai.

2. The Joint Registrar of Co-operative Societies,
Virudhunagar

3. The Chairman,
Tamilnadu Public Service Commission,
Govt. Estate, Chennai

4. The Tamilnadu Public Service Commission,
rep. by its Secretary, Govt. Estate, Chennai.

5. The Registrar, Tamilnadu Administrative Tribunal,
Chennai. ... Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of writ of certiorarified mandamus calling for the records of the fifth respondent herein culminating in order dated 11.4.2000 passed in O.A.No.710/93 and quash the same and direct the third respondent herein to publish the result of the petitioner herein in respect of the special qualifying examination held on 15.10.89 in Reg.No.579 and consequently direct the first respondent to consider the petitioner's appointment of regular Junior Inspector of Co-operative Societies based on the result of special qualifying exam.

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For Petitioner : Mr. R.Bharanidharan

For Respondents : Mr.C.Kalaiselvan, AGP - R1 & R2
Mr. R.Suresh Kumar - R3 & R4

O R D E R

(Order of the Court was made by K.SUGUNA,J)

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This writ petition has been filed as against the order passed in O.A.No.710 of 1993 dated 11.4.2000. The facts leading to this writ

petition are that the petitioner was appointed as a temporary Junior Inspector with effect from 16.12.1985. Subsequently in the year 1988, the Government has issued G.O.Ms.No.271 dated 10.11.1988 proposing to regularise all the temporary Junior Inspectors of Co-operative Department by conducting a special qualifying examination through the Tamilnadu Public Service Commission. Since the petitioner has also one of the candidate, who came within the conditions prescribed in G.O.Ms.No.271, he too applied for the said post, but the petitioner's results have been withheld. As against this, the petitioner has filed an original application No.710 of 1993 and by an order dated 11.4.2000, the Tamilnadu Administrative Tribunal dismissed the above original application. As against this, the petitioner has filed the above writ petition.

2. According to the learned counsel for the petitioner the petitioner's answer sheets have been withheld by the Tamilnadu Public Service Commission basing on the charges levelled against him by a proceeding dated 22.7.1987 and also by another charge memo. As far as charge memo dated 22.7.1987 is concerned, by an order dated 28.3.1998, the petitioner has been relieved of the charges by administering only a warning. As far as other charges are concerned, punishment of stoppage of increment for a period of three months was imposed. According to the learned counsel for the petitioner, the above said charges were framed under Rule 17 (a) of CCA Rules of the Tamilnadu Government. According to the learned counsel for the petitioner, as on the last date for receipt of the application, the petitioner was not undergoing any punishment and not even a charge memo has been issued on him, as such, withholding of the petitioner's answer sheets only basing on the report submitted by the Registrar of Co-operative Societies to the effect that the petitioner's character and conduct are not satisfactory is illegal and arbitrary. Apart from this, according to the learned counsel for the petitioner, actually special process has been commenced basing on the orders issued under G.O.Ms.No.271 dated 10.11.1988 and as per this Government Order, the required qualifications are only educational qualification as well as age qualification. Since the petitioner has complied with these two requirements, according to the learned counsel for the petitioner, the petitioner's paper could not have been withheld by the Tamilnadu Public Service Commission. That apart, though the Registrar has submitted an adverse report with regard to his character and conduct, subsequently, the Registrar himself submitted a report dated 14.3.1990 to the effect that the petitioner's character and conduct is satisfactory. Basing on the earlier report, papers have been withheld by the Tamilnadu Public Service Commission. According to the learned counsel for the petitioner, withholding of the answer sheets and withholding of the results are prima facie illegal and arbitrary and the learned counsel for the petitioner prayed for issuance of a direction directing the respondents to value the answer sheet of the petitioner and to provide an appointment to him.

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3. On the other hand, learned counsel appearing for the Tamilnadu Public Service Commission as well as the learned Additional Government Pleader appearing for the Registrar of Co-operative

Societies, contended that as per the rules, the character and conduct of the Government Servants is a mandatory requirement for any appointment. Since the report has been submitted basing on the charge memo issued with regard to the petitioner herein, withholding of the answer sheets of the petitioner is in order and also in conformity with the Rules. Apart from this, according to the learned counsel appearing for the Tamilnadu Public Service Commission, though as per G.O.Ms.No.271, Co-operative Department dated 10.11.1988 the required qualifications are age qualification and educational qualification, but as a selection authority that too since this is a special qualifying examination, basing on the report submitted by the Registrar, the Commission has got the power to withheld the answer sheets as well as the result of the petitioner herein. As such, the learned counsel appearing for the respondents have prayed for dismissal of the above said writ petition.

4. We have considered the above submissions of both the learned counsel for the petitioner as well as for the respondents. Admittedly, the process of special absorption has started by G.O.Ms.No.271 dated 10.11.1988. As per the said Government Order, as stated above, only two conditions have been prescribed, namely, age qualification and educational qualification. As far as the petitioner is concerned, he satisfies the above two qualifications prescribed. Apart from this, though the Registrar of the Co-operative Societies submitted a adverse report, but admittedly, the Registrar has submitted an another report dated 14.3.1990 to the effect that the character and conduct of the petitioner was satisfactory. The selection has been done subsequent to this one. Without any reason, adverse certificate has been taken into account and the certificate, which has been given in favour of the petitioner, had been totally ignored. That apart, four other temporary Junior Inspectors were also denied absorption basing on the charges pending against them under Rule 17(a) of the CCA Rules. They have filed O.A.Nos.3725 to 3728 of 1994 and by an order dated 9.9.2004, the Tamilnadu Administrative Tribunal allowed the said original applications. But in the case of the petitioner herein, the Tribunal has taken a different stand, which is arbitrary and unsustainable. On enquiry, it was informed the order passed in O.A.Nos.3725 to 3728 of 1994 had become final and no writ petition has been filed as against that order. As such, having accepted the orders of the Tribunal passed in the above said batch of O.As., different treatment cannot be given to the petitioner in this writ petition. Hence, the order dated 11.4.2000 made in O.A.No.710 of 2003 is set aside and the writ petition is allowed as prayed for. We have now gone through the answer sheets of the petitioner and the petitioner has secured 93 marks, though the qualifying mark is 60.

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Hence, the first respondent is directed to pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order. No costs.

sl

Sd/-
Assistant Registrar

/true copy/

Sub Assistant Registrar

To

1. The Registrar of Co-operative Societies, Chennai.

2. The Joint Registrar of Co-operative Societies,Virudhunagar

3. The Chairman, Tamilnadu Public Service Commission,
Govt. Estate, Chennai

4. The Secretary, Govt. Estate, Chennai.
The Tamilnadu Public Service Commission.

5. The Registrar, Tamilnadu Administrative Tribunal, Chennai.

1 CC TO MR.K. KARTHIKEYAN, ADVOCATE SR 31616

1 CC TO MR.R. SURESH KUMAR, SENIOR STANDING COUNSEL SR 31103

W.P.No.43605/02

JE(CO)

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